CHOCKALINGAM KMS KUMARAPPAN CHETTIAR
v. AZIZAH HARUN

HIGH COURT MALAYA, ALOR SETAR
CHOO KAH SING JC
[CIVIL APPEAL NO: 11(B) NCVC-15-03-2015]
20 MARCH 2016

MONEYLENDERS: *Loan – Loan of money – Whether lender entitled to charge interest upon interest – Lender's right to enforce repayment – Whether within limitation period of six years – Whether complied with prerequisites under s. 21 of Moneylenders Act 1951 and O. 79 r. 3 of Rules of Court 2012 – Whether borrower admitted to loan sum*

The defendant borrowed a total sum of RM60,000 from the plaintiff, a licensed money lender under the Moneylenders Act 1951 ('the Act'). The lending and borrowing was properly documented and the parties had executed two promissory notes, each amounting to RM30,000. When the defendant defaulted on the repayment of the loan, after paying only the amount of RM3,000, the plaintiff filed a writ action at the Magistrates' Court against the defendant. Upon receiving writ and statement of claim, the defendant wrote a letter in which she admitted to the loan and that she would repay the same and thereafter informed the plaintiff that she wished to record a consent judgment. However, the defendant subsequently retracted her admission and filed a statement of defence and counterclaim, *inter alia*, denying that she borrowed the loan sum and asserting that she had in fact paid RM30,000. The Magistrate, although found that the plaintiff had proven his case and that the defendant's defence was mere denial, yet dismissed the plaintiff's case. The Magistrate found that the plaintiff's claim was not 'enforceable' on the grounds that: (i) the plaintiff could not charge interest upon interest; (ii) the plaintiff had erred on the date the cause of action arose; (iii) the plaintiff's claim failed to take into account the sum paid by the defendant; and (iv) the plaintiff had failed to comply with ss. 19 and 21 of the Act. Hence, the appeal by the plaintiff.

Held (allowing appeal; setting aside order of Magistrates' Court):

(1) The defendant had made payments on 20 October 2008 which were sufficient to trigger s. 26(2) of the Limitation Act 1953. The plaintiff's right to enforce the repayment of the promissory notes against the defendant would have accrued afresh on 20 October 2008. Hence, the plaintiff was still within the period of six years when he filed his writ action on 11 March 2014. (paras 19 & 20)

(2) Section 21 of the Act only requires the licensed money lender to produce an account under s. 19 when he sues the borrower/debtor in the court. Hence, for the claimant to make a claim under the Act, there are only two prerequisites, namely, the compliance with s. 21 of the Act and

A O. 79 r. 3 of the Rules of Court 2012 ('ROC'). The plaintiff had produced a statement of account before the court as part of the statement of claim. In addition, the statement of claim of the plaintiff had included the particulars required under O. 79 r. 3 of the ROC and therefore, the plaintiff had complied with both prerequisites. (paras 27, 29 & 30)

B **(3)** The defendant had unconditionally admitted to the plaintiff's claim since the inception of the suit. Hence, it would be unjust to the plaintiff if the defendant was not made liable to repay the plaintiff. The judgment was thus entered for a sum of RM57,000 and there should be no interest upon interest as the plaintiff could not claim for it. (paras 31 & 33)

C **Case(s) referred to:**

Chockalingam KMS Kumarappan Chettiar v. Aziz Hj Asahari [2008] 3 CLJ 725 HC ***(not foll)***

Legislation referred to:

Limitation Act 1953, s. 26(2)

D Moneylenders Act 1951, ss. 18, 19, 21(1), First Schedule

Rules of Court 2012, O. 79 r. 3

For the appellant/plaintiff - Muhamad Samsul; M/s Burhan & Co
For the respondent/defendant - Ku Rahman; M/s Mirzawati & Assocs

E *[Editor's note: Appeal from Magistrates' Court; Civil Suit No: A72NCC-286-03-2014.]*

Reported by S Barathi

JUDGMENT

F **Choo Kah Sing JC:**

Introduction

[1] This is an appeal filed by the plaintiff/appellant (hereinafter referred to as "the plaintiff") against the decision of the Magistrate Court dated 24 February 2015, where the Magistrate dismissed the plaintiff's claim after

G a full trial.

[2] The plaintiff's appeal was heard before me, and on 17 December 2015, I allowed the plaintiff's appeal and set aside the order of the Magistrate Court dated 24 February 2015. I ordered the defendant/respondent (hereinafter referred to as "the defendant"), *inter alia*, to pay the plaintiff fifty

H seven thousand ringgit (RM57,000) and costs of five thousand ringgit (RM5,000) for the appeal.

[3] The defendant was not satisfied with my decision and has filed an appeal to the Court of Appeal. This judgment serves as my reasons for the

I decision of this High Court.

Background Facts

[4] The plaintiff is a licenced money lender under the Moneylenders Act 1951 (hereinafter referred to as "the Act"). The plaintiff averred that the defendant had on two occasions borrowed a sum of thirty thousand ringgit (RM30,000) each from the plaintiff. The first occasion was on 31 January 2002, and the second occasion was on 23 December 2003.

[5] The plaintiff also averred that the defendant had pledged and deposited a title deed HS(M) 922/87, Lot No. 1935, Mukim Mergong, Daerah Kota Setar, Negeri Kedah with the plaintiff as collateral security for the total loan sum of RM60,000 (hereinafter referred to as the "loan sum").

[6] The lending and borrowing was properly documented. The plaintiff and the defendant executed two promissory notes, each amounting to thirty thousand ringgit (RM30,000) as the sum borrowed by the defendant. With regard to the pledging of the title deed, the parties executed a document entitled "Memorandum of Contract of Depositing Title Deed to the Lender by the Borrower under Moneylender's Ordinance 1951 Section 16(4) or Implied by Law By Virtue Thereof".

[7] The plaintiff further averred that defendant did not repay the loan sum in full. The plaintiff admitted that the defendant had paid only three thousand ringgit (RM3,000). Hence, the defendant still owed the plaintiff the balance outstanding loan sum together with chargeable interest.

[8] On 11 March 2014, the plaintiff filed a writ action at the Magistrate Court *via* suit No. A72NCC-286-03/2014 against the defendant. The defendant, after receiving the writ and statement of claim, wrote a letter dated 19 March 2014 to the plaintiff. The relevant contents of the said letter are as follows:

> Saya merujuk kepada perkara tersebut diatas dan telah menerima Writ dan [*sic*] Pernyataan Tuntutan seperti diatas.
>
> Saya dengan ini mengakui dan berjanji akan jelaskan pinjaman ini dalam masa 7 bulan dari tarikh surat ini. Ini adalah kerana anak saya yang berada di Jepun akan membantu saya menjelaskan pinjaman ini.

[9] On 25 March 2014, the defendant wrote a letter to a firm of solicitors Tetuan Husni Othman & Norhayati appointing the firm as her solicitors for the suit action. The defendant in the letter stated as follows:

> Saya melantik peguam daripada Husni Osman & Norhayati untuk mewakili didalam tindakan kes ini dan arahan saya adalah untuk merakamkan penghakiman persetujuan dengan syarat bahawa di beri masa tujuh (7) bulan untuk menjelaskan penghakiman ini.

[10] The firm of solicitors Tetuan Husni Osman & Norhayati then wrote a letter dated 27 March 2014 to the then plaintiff's firm of solicitors Tetuan Meg Nacha Zahir & Co informing them that the defendant wished to record a consent judgment based on the terms as set out as per the instruction of their client.

[11] There was no record of a consent judgment, despite the admission letters from the defendant and her solicitors. The defendant retracted her admission and subsequently filed a statement of defence and a counterclaim. The suit was set down for full trial.

[12] In her statement of defence, the defendant denied that she had borrowed the loan sum. The defendant asserted that she had in fact paid thirty thousand ringgit (RM30,000) to the plaintiff in order to get back her title deed from the plaintiff. The defendant had raised various reasons in support of her defence. The defendant had filed a counterclaim against the plaintiff for, *inter alia*, the return of thirty thousand ringgit (RM30,000) and damages, such as exemplary and punitive damages.

[13] The Magistrate dismissed the plaintiff's case on 24 February 2015 after the full trial. The Magistrate did not touch on the defendant's counterclaim in his judgment. Presumably, the Magistrate must have disallowed the counter claim.

[14] Ironically, the Magistrate found the plaintiff had proved his case and that the defendant's defence was mere denial, yet, the Magistrate did not give judgment in favour of the plaintiff. The Magistrate found that the plaintiff's claim was not "enforceable" because of four reasons (see pp. 38 to 43 of the Rekod Rayuan Tambahan).

[15] The first reason was that the plaintiff could not charge interest upon interest (faedah ke atas faedah). Secondly, the plaintiff had erred on the date the cause of action arose. Thirdly, the plaintiff's claim failed to take into account the sum paid by the defendant, and lastly, the plaintiff failed to comply with ss. 19 and 21 of the Moneylenders Act 1951.

The Findings Of This Court

[16] I fully agree with the Magistrate on his finding of facts relating to the plaintiff's case at the lower court. However, I could not agree with his decision not to allow the plaintiff's claim. The Magistrate alluded to four reasons in his judgment.

First: Interest Upon Interest

[17] On this point, I agree with the Magistrate's reasoning that the plaintiff could not claim interest upon interest. The plaintiff's counsel conceded on this point. The plaintiff's counsel sought the indulgence of this court to grant interest as it thinks fit.

Second: The Date Of The Cause Of Action Arose

[18] The Magistrate stated that the date of the cause of action arose when the parties executed the promissory note. There are two promissory notes with different dates, the first one was dated 31 January 2002, and the second one was dated 12 December 2003. The Magistrate in his judgment stated as follows:

> [23] Terdapat isu berkenaan dengan tarikh permulaan kausa tindakan dalam kes ini. Bagi sesuatu perjanjian pinjaman, sesuatu kausa tindakan hanya akan bermula apabila terdapat kemungkiran perjanjian. Dalam kes ini tiada sebarang syarat dalam perjanjian berkenaan tempoh untuk defendan membuat bayaran semula.
>
> [24] Oleh yang demikian, mahkamah mendapati bahawa tarikh permulaan untuk kausa tindakan adalah bermula selepas perjanjian ditandatangani oleh kedua-dua pihak iaitu dalam tahun 2002 dan juga tahun 2003. Tuntutan plaintiff untuk tempoh permulaan pengiraan kadar faedah bermula pada 31.10.2008 adalah tidak tepat.

[19] It was not disputed that the defendant had made payments on 20 October 2008. These payments are sufficient to trigger s. 26(2) of the Limitation Act 1953 which states:

> Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall deemed to have accrued on and not before the date of the acknowledgement of the last payment.

[20] Relying on the above section, the plaintiff's right to enforce the repayment of the promissory notes against the defendant would have accrued afresh on 20 October 2008. The plaintiff filed his writ action on 11 March 2014 which was still within the period of six years from the date of 20 October 2008. Hence, I do not agree with the reasoning of the Magistrate on this second point.

Third Point: Plaintiff's Claim Did Not Take Into Consideration Of Money Received

[21] In the plaintiff's statement of claim, *inter alia*, the plaintiff claimed sixty thousand ringgit (RM60,000) as the principal sum owing. The plaintiff also claimed chargeable interest at 12% per annum based on a total outstanding sum amounting to ninety eight thousand six hundred ringgit (RM98,600) as at 10 March 2014 until date of full payment.

[22] The plaintiff's counsel conceded that the principal sum owed by the defendant should be reduced from sixty thousand ringgit (RM60,000) to fifty seven thousand ringgit (RM57,000) after taking into account the part payment of three thousand ringgit (RM3,000).

[23] The plaintiff's counsel urged this court to accept the plaintiff's request to enter a judgment sum of fifty seven thousand ringgit (RM57,000) only, not sixty thousand ringgit (RM60,000) as pleaded.

The Fourth Point: Non-compliance Of ss. 19 And 21 Of The Act

[24] Basically, the Magistrate decided that the plaintiff's statement of claim failed to comply with s. 21(1) of the Act which states as follows:

> Where proceedings are taken in any Court by a moneylender for the recovery of any money lent after the commencement of this Act or the enforcement of any moneylending agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, he shall produce a statement of his account as prescribed in section 19.

[25] Section 19 of the Act refers a statement of account to be given in the form as prescribed in the First Schedule. The prescribed form in the First Schedule has four tables. The first table deals with information of the principal and interest sums. The second table deals with the number of times a borrower has made repayments. The third table deals with the total amount remain outstanding. The last table deals with sums not yet due.

[26] The Magistrate found that no such information or prescribed form was adduced in court, and that the non-compliance was fatal.

[27] I could not agree with the Magistrate's finding on this point. I refer to the exh. B of the plaintiff's statement of claim (see p. 12 of the Rekod Rayuan). Exhibit B is a statement of account which is similar to the prescribed form found in the First Schedule of the Act. A statement of account was in fact produced before the court as part of the statement of claim. In addition to the aforesaid requirement, the statement of claim of the plaintiff has included the particulars required under O. 79 r. 3 of the Rules of Court 2012.

[28] In the written submission, counsel for the defendant submitted the case of *Chockalingam KMS Kumarappan Chettiar v. Aziz Hj Asahari* [2008] 3 CLJ 725 in support of the defendant's defence. In that case, the High Court Judge held that non-compliance of s. 18 of the Act is fatal in a claim under the Act. In gist, s. 18 of the Act requires the lender to keep a proper and permanent records of the accounts of each loan made after the commencement of the Act. The High Court Judge in his judgment, at p. 729, held:

> … Therefore in my judgment, before a money lender can enforce any claim in court in relation to which there was a default by the borrower, he must as a condition-precedent satisfy the court that he had complied with that provision. Since this is a requirement under the law, it is irrespective whether or not the respondent in this case raised it or not in the suit. The appellant cannot run away from this requirement imposed on him by law.

[29] With due respect to the judgment of the High Court Judge, I beg to differ with His Lordship's view that it is a condition-precedent for the lender to first satisfy the court that he has complied with s. 18 before his claim can succeed under the Act. I am of the considered view that s. 21 of the Act only requires the licensed money lender to produce an account under s. 19 when he sues the borrower/debtor in court.

[30] For a claimant to make a claim under the Act, there are only two prerequisites, namely, the compliance with s. 21 of the Act and the compliance with O. 79 r. 3 of the Rules of Court 2012. In this instant case, I am of the considered view that the plaintiff had complied both the prerequisites. Section 18 of the Act, in my view, is not a prerequisite for a claimant to succeed a claim under the Act. It is rather a statutory regulation and requirement for a licensed money lender to keep proper and permanent records.

[31] In this instant case, there are ample evidence to support that the defendant did in fact owe the plaintiff a sum of fifty seven thousand ringgit (RM57,000). The defendant unconditionally admitted to the plaintiff's claim since the inception of the suit. I am of the considered view that it would be unjust to the plaintiff if the defendant is not made liable to repay the plaintiff for the reasons as alluded to by the Magistrate in his judgment.

[32] Based on the above findings, I see no reason why the plaintiff's claim should fail or that the plaintiff's claim is not "enforceable".

Conclusion

[33] After having considered the above, I allowed the plaintiff to enter judgment for a sum of fifty seven thousand ringgit (RM57,000) only; and there shall be no interest upon interest; the contractual interest of 12% per annum is allowed and is calculated based on fifty seven thousand ringgit (RM57,000) from the date 31 October 2008 (as proposed by the plaintiff) to the date before filing of the writ, ie, 10 March 2014; and interest of 5% per annum calculated based on fifty seven thousand ringgit (RM57,000) from the date the decision of the Magistrate Court, ie, 24 February 2015 until date of full settlement, and costs of five thousand ringgit (RM5,000) to be paid to the plaintiff by the defendant for this appeal.